

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO.: 5:15-CV-377-F

STEWART ENGINEERING, INC.,

Plaintiff,

v.

CONTINENTAL CASUALTY
COMPANY, ZURICK AMERICAN
INSURANCE COMPANY, SKANSKA
USA BUILDING, INC., and CLARK
NEXSEN, INC.,

Defendants.

**DEFENDANT CLARK NEXSEN, INC.'S
MOTION TO DISMISS OR DROP PARTY**

NOW COMES Defendant Clark Nexsen, Inc., by and through undersigned counsel, and hereby moves the court, pursuant to Rules 12(b)(6) and 12(c) or, alternatively Rule 21 of the Federal Rules of Civil Procedure to dismiss Clark Nexsen or alternatively to drop Defendant Clark Nexsen as a party.

In support of this Motion, Clark Nexsen shows unto the Court that Clark Nexsen was first named in this action in Plaintiff's Amended Complaint filed on November 23, 2015. The references to Clark Nexsen in the Amended Complaint are few and none contain a claim for relief.

The only references to Clark Nexsen – other than jurisdictional and party descriptive allegations – are the following:

1. Paragraph 3, the Amended Complaint alleges that Clark Nexsen is named “in order to adjudicate any rights they have, or allegedly have, under the insurance policy at issue.”
2. Paragraphs 18 and 20-23 describe Clark Nexsen’s contractual relationship to Plaintiff;
3. Paragraph 25 mentions Clark Nexsen as part of the construction bidding process;
4. Paragraphs 62-66 describe Clark Nexsen’s demands for indemnification from Plaintiff;
5. Paragraph 78 describes why the likely claims against Plaintiff exceed the single occurrence limit;
6. The Prayer for Declaratory Relief includes Clark Nexsen’s undefined claim.

Plaintiff does not seek to adjudicate either Clark Nexsen’s entitlement nor the quantum of its claim for indemnification. Nor will the Court’s resolution of the claims in this case affect Clark Nexsen’s entitlement or the quantum of its claim for indemnification. Simply put, there is no claim for relief of any kind against Clark Nexsen and this action should be dismissed as to Clark Nexsen.

In addition to the foregoing, Clark Nexsen relies upon the pleadings in this matter and the Memorandum of Law filed concurrently herewith.

WHEREFORE, Defendant Clark Nexsen respectfully requests that the Court dismiss this action pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted or drop Clark Nexsen as a party pursuant to Rule 21 because Clark Nexsen is not a party that should be joined under Rule 19 nor a party that could be joined under Rule 20.

Respectfully submitted, this 19th day of August, 2016.

MEYNARDIE & NANNEY, PLLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has filed the foregoing this 19th day of August, 2016 through the Court's CM/ECF system and that all parties to this action will be served through that system.

/s/ Robert A. Meynardie
Robert A. Meynardie